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NO.: A-487 March 13, 1957

SUBJECT: Treaty of Friendship, Commerce and Navigation with Japan

TO: The American Embassy
Tokyo.

DEPARTMENT OF STATE
L/T
MAR 15 1957

Reference is made to the Embassy's despatch no. 880 dated February 25, 1957 inquiring about the meaning of paragraphs 3 and 5 of Article XI of the 1953 Treaty of Friendship, Commerce and Navigation between United States and Japan. The question arises in connection with a United States tax liability of a British national, a resident of Japan, who claims that by virtue of paragraph 3 of Article XI of the treaty with Japan, providing for most-favored-nation treatment with respect to payment of taxes, he is entitled to the tax benefit provided for in Article VI of the double taxation convention of 1945, as amended, between the United States and the United Kingdom. The Embassy raises in this connection the question of the applicability of paragraph 5 of the FCN treaty with Japan.

The claimant in question is not entitled to claim under paragraph 3 of Article XI of the FCN treaty with Japan. That paragraph is limited by its terms to nationals and companies of Japan and nationals and companies of the United States, respectively. Nationals of third countries even though resident in Japan or the United States are not entitled to claim benefits under it. Paragraph 5(b) of Article XI in effect constitutes an exception to the rule of most-favored-nation treatment established in paragraph 3 with respect to such tax advantages as may be extended by one party to the treaty to nationals and companies of a third country through the provisions of a double taxation convention between the treaty partner and the third country in question. Accordingly, tax advantages provided for in the U. S. - U. K. double taxation convention could not be claimed by virtue of the provisions of paragraph 3 of Article XI of the FCN treaty with Japan.

Finally, the claimant, being a resident of Japan, may be interested in the provisions of Article XIV of the double taxation convention relating to income between the United States and Japan, signed in Washington on April 16, 1954.

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DRAFTED BY L/E:JJCzyzak:mbl 3/12/57 | APPROVED BY Stanley D. Metzger

CLEARANCES: TAD - Mr. Sullivan FN - Mr. Bekker in substance NEA - Mr. Little in substance Treasury - cleared in substance Mr. Gooding ~~Internal Revenue~~